

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

GORDON C. REID,	:	
	:	CIVIL ACTION NO. 3:18-2101
Plaintiff	:	(JUDGE MANNION)
v.	:	
MARK INCH, <i>et al.</i>,	:	
	:	
Defendants	:	

MEMORANDUM

I. Background

Plaintiff, an inmate formerly confined at United States Penitentiary, Lewisburg, Pennsylvania¹, filed the above action pursuant to Bivens² and the Federal Tort Claims Act (FTCA), [28 U.S.C. §1346](#). The action proceeds, via an amended complaint, filed on April 19, 2019. (Doc. [21](#)). The named Defendants are Director Mark Inch, Warden David J. Ebbert, Captain Jay Rhodes, Lieutenant Camden Scampone, Mid-level Provider J. Ayers, Maintenance Worker Foreman Anthony Gilligan, the United States of America, six John Doe defendants, and one Jane Doe defendant. Id. Reid

¹ By Notice dated July 21, 2022, Plaintiff notified the Court that he had been released and his new address is 124 High Street Somersworth, NH 03878. (Doc. [202](#)).

² [Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics](#), 403 U.S. 388 (1971).

alleges that on March 20, 2018, Defendant Gilligan made a false incident report to justify putting Reid in restraints. Id. He further contends that unidentified individuals applied handcuffs too tight, causing wrist wounds and hand swelling under the supervision of Lieutenant Scampone. Id. Finally, Reid claims that he was stripped in front of female staff, placed in a cell infested with ants and other insects, wrongfully subjected to oleoresin capsicum spray, and that Mid-level Provider Myers and other unidentified medical staff saw and refused to treat his injuries. Id.

On May 22, 2022, Defendants filed a motion to dismiss and for summary judgment (Doc. 194), and on May 27, 2022, Defendants filed a brief in support of their motion. (Doc. 199). On June 17, 2022, Plaintiff filed a motion stay proceedings. (Doc. 200). By Order dated August 9, 2022, the Court denied Plaintiff's motion to stay and granted him until August 26, 2022 within which to file his brief in opposition. (Doc. 204). No brief was filed.

On September 12, 2022, Plaintiff filed a motion for enlargement of time within which to file his brief in opposition. (Doc. 205). By Order dated September 15, 2022, this Court granted Plaintiff's enlargement of time until October 10, 2022, within which to file his brief in opposition. (Doc. 207). Plaintiff failed to file his brief in opposition or request an enlargement of time within which to do so.

By Order dated January 12, 2023, the Court directed Plaintiff to show cause on, or before, January 26, 2023, as to why the instant action should not be dismissed pursuant to [Fed.R.Civ.P. 41\(b\)](#) for failure to prosecute. (Doc. [208](#)). To date, Plaintiff has failed to respond to this Court's Order. Thus, for the reasons set forth below, the Court will dismiss the above captioned action for Plaintiff's failure to prosecute.

II. Legal Standard

[Federal Rule of Civil Procedure 41\(b\)](#) provides that an action may be involuntarily dismissed “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order.” Further, the rule permits *sua sponte* dismissals by the court. [Link v. Wabash R.R. Co.](#), 370 U.S. 626, 630–31 (1962); [Hewlett v. Davis](#), 844 F.2d 109, 114 (3d Cir. 1988) (same). “The authority of a court to dismiss *sua sponte* for lack of prosecution has generally been considered an inherent power, governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” [Link](#), 370 U.S. at 630–31; see also [Mindek v. Rigatti](#), 964 F.2d 1369 (3d Cir. 1992). Specifically, a plaintiff's failure to comply with a court order constitutes a failure to prosecute his action, and therefore his action is subject to dismissal pursuant to [Fed. R.](#)

Civ. P. 41(b). A court's decision to dismiss for failure to prosecute is committed to the court's sound discretion and will not be disturbed absent an abuse of discretion. See Emerson v. Thiel Coll., 296 F.3d 184, 190 (3d Cir. 2002). In evaluating whether an action should be dismissed for failure to prosecute, a court must balance six factors":

(1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party ... was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.

Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863, 868 (3d Cir. 1984).

The Poulis factors are not "a magic formula whereby the decision to dismiss or not to dismiss a plaintiff's complaint becomes a mechanical calculation" Mindek, 964 F.2d at 1373. No one factor is determinative and not all of the Poulis factors must be met to warrant dismissal. Mindek, 964 F.2d at 1373; Hicks v. Feeney, 850 F.2d 152, 156 (3d Cir. 1988). Instead, the decision must be made in the context of the court's extended contact with the litigant. Dismissal for failure to prosecute is appropriately labeled a "drastic sanction," however, because it is "deemed to be an adjudication on the merits, barring any further action between the parties." Sebrell ex rel. Sebrell v. Phila. Police Dep't, 159 F. Appx. 371, 373 (3d Cir.

2005) (not precedential) (citing [Landon v. Hunt](#), 977 F.2d 829, 833 (3d Cir. 1992); Fed. R. Civ. P. 41(b)). In light of this framework, the Court finds that a careful assessment of the Poulis factors in the case at bar weighs heavily in favor of dismissing this action.

III. Discussion

The Court will address each Poulis factor below.

1. Plaintiff's Personal Responsibility

Looking to the Poulis factors, the Court finds that a consideration of the first factor, the extent of the party's personal responsibility, shows that the delays in this case are entirely attributable to Reid. Because Reid is a *pro se* litigant, he is solely responsible for prosecuting his claim. See [Hoxworth v. Blinder Robinson & Co.](#), 980 F.2d 912, 920 (3d Cir. 1992). "As a general rule, a *pro se* litigant is responsible for his failure to comply with court orders." [Lopez v. Cousins](#), 435 F. App'x 113, 116 (3d Cir. 2011) (not precedential); see also [Emerson](#), 296 F.3d at 191; [Winston v. Lindsey](#), Civ. No. 09-224, 2011 WL 6000991, at *2 (W.D. Pa. Nov. 30, 2011) (concluding that a *pro se* litigant "bears all of the responsibility for any failure to prosecute his claims"). Reid has failed to abide by Court Orders and neglected to litigate this case. Specifically, Reid has failed to file a brief in opposition to Defendants'

pending motion to dismiss and for summary judgment, despite being directed to do so by the Court. Additionally, Reid was specifically warned that his failure to file an opposition brief or respond to the Court's Order may result in the dismissal of this action. As of the date of this Memorandum, Reid has failed to comply with either directive. Accordingly, the first Poulis factor weighs in favor of dismissal.

2. Prejudice to the Moving Party

As for the second Poulis factor, a finding of prejudice does not require "irremediable harm." [Adams v. Trs. of N.J. Brewery Emps.' Pension Tr. Fund](#), 29 F.3d 863, 873–74 (3d Cir. 1994). Rather, "the burden imposed by impeding a party's ability to [effectively prepare] a full and complete trial strategy is sufficiently prejudicial." [Ware v. Rodale Press, Inc.](#), 322 F.3d 218, 222 (3d Cir. 2003). Here, the Court finds that Reid's failure to respond to the Court's Orders has frustrated and delayed resolution of this action. Going forward, such failure to litigate would prejudice Defendants, who without timely responses by Reid could not seek a timely resolution of the case. Accordingly, the Court finds that the second Poulis factor weighs in favor of dismissal.

3. History of Dilatoriness

“Extensive or repeated delay or delinquency constitutes a history of dilatoriness, such as consistent non-response to interrogatories, or consistent tardiness in complying with court orders.” [Adams](#), 29 F.3d at 874; see also [Emerson](#), 296 F.3d at 191 (*per curium*) (finding a history of dilatory conduct where the plaintiff repeatedly requested stays and failed to comply with court-mandated deadlines). Conversely, “conduct that occurs one or two times is insufficient to demonstrate a history of dilatoriness.” [Briscoe v. Klaus](#), 538 F.3d 252, 261 (3d Cir. 2008) (citation omitted). In deciding whether a history of dilatory conduct exists, this Court must evaluate “a party’s problematic acts . . . in light of its behavior over the life of the case.” [Adams](#), 29 F.3d at 875. Here, Reid has not only failed to respond to the Court’s Orders requiring him to file a brief in opposition, but he has failed to show cause why this action should not be dismissed. In fact, Reid has not communicated with the Court since the filing of his motion for enlargement of time on September 12, 2022. Accordingly, Reid’s actions demonstrate a history of dilatoriness that weighs in favor of dismissal.

4. Willful Conduct or Bad Faith

The fourth Poulis factor requires the Court to consider whether Reid’s conduct reflects mere inadvertence or negligence, as opposed to “strategic,”

“intentional or self-serving behavior.” [Adams](#), 29 F.3d at 875-76. “Under this factor, the District Court must consider whether the conduct was the type of willful or contumacious behavior which [can be] characterized as flagrant bad faith.” [Briscoe](#), 538 F.3d at 262 (quotation omitted). Here, Reid’s failure to abide by multiple Orders by the Court and failure to file a brief in opposition to Defendants’ motion “demonstrate[s] a willful disregard for procedural rules and court directives.” [Gilyard v. Dauphin Cty. Work Release](#), No. 10-1657, 2010 WL 5060236, at *2 (M.D. Pa. Dec. 6, 2010). Thus, the fourth Poulis factor weighs in favor of dismissal.

5. Availability of Alternative Sanctions

The fifth Poulis factor examines the effectiveness of sanctions other than dismissal. 747 F.2d at 868. Generally, “sanctions less than dismissal [are] ineffective when a litigant, such as [Reid], is proceeding pro se.” See Lopez, 435 F. App’ x at 116; Emerson, 296 F.3d at 191 (*per curium*); Nowland v. Lucas, No. 1:10-CV-1863, 2012 WL 10559, at *6 (M.D. Pa. Jan. 3, 2012) (“This case presents such a situation where the plaintiff’s status as a *pro se* litigant severely limits the ability of the court to utilize lesser sanctions to ensure that this litigation progresses in an orderly fashion.”). Here, Reid is proceeding *pro se* and *in forma pauperis*, there is no evidence to suggest that paying monetary sanctions will remedy Reid’s deficiencies.

Therefore, monetary sanctions would not be effective in this case. Moreover, Reid's failure to respond to Court Orders leads to an inference that further orders to him would not be effective. Accordingly, the fifth Poulis factor weighs in favor of dismissal.

6. Meritoriousness of Plaintiff's Claims

The final Poulis factor enjoins the Court to consider the meritoriousness of Reid's claims. 747 F.2d at 868. A claim is deemed meritorious when "the allegations of the pleadings, if established at trial, would support recovery by plaintiff" Poulis, 747 F.2d at 870. "Generally, in determining whether a plaintiff's claim is meritorious, [courts] use the standard for a Rule 12(b)(6) motion to dismiss for failure to state a claim." Briscoe, 538 F.3d at 263 (citing Poulis, 747 F.2d at 869–70). Here, assuming for the sake of argument that Reid's claims have merit, consideration of this factor cannot save his case because he is now wholly noncompliant with his obligations as a litigant. The Plaintiff cannot refuse to address the merits of his claims, and then assert the untested merits of these claims as grounds for denying a motion to sanction him. Furthermore, it is well-settled that " 'no single Poulis factor is dispositive,' Ware, 322 F.3d at 222, [and it is] clear that 'not all of the Poulis factors need be satisfied in order to dismiss a complaint.' Mindek, 964 F.2d at 1373." Briscoe, 538 F.3d at 263. Therefore, the untested

merits of the non-compliant Plaintiff's claims, standing alone, cannot prevent imposition of sanctions. This is particularly true in this instant case, where Reid's actions reveal that he has abandoned this litigation.

7. Balancing the Poulis factors

To reiterate, when weighing the Poulis factors, there is no "magic formula" or "mechanical calculation" that automatically warrants dismissal for failure to prosecute. [Briscoe](#), 538 F.3d at 263. Quite the contrary, the Court is guided by the Third Circuit's warning that "no single Poulis factor is dispositive," and that "not all of the Poulis factors need be satisfied in order to dismiss a complaint." [Ware](#), 322 F.3d at 222; [Mindek](#), 964 F.2d at 1373.

In sum, the Poulis factors weigh heavily in favor of dismissal of this action for lack of prosecution. As it is apparent to the Court that Reid has made no effort to prosecute his case as evidenced by his failure to respond to this Court's Orders, his complaint will be dismissed for failure to prosecute. See [Silbermann](#), 2021 WL 1705228, at *3.

IV. Conclusion

Reid's last communication with the Court was on September 12, 2022. It is clear that Reid has been released from custody. Reid's prolonged failure to communicate with the court and comply with its orders has forced the

Court to consider whether to dismiss the instant action for failure to prosecute. After consideration of the Poulis factors, it is clear that the factors militate in favor of dismissal of Reid's claims.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Dated: January 31, 2023

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